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SENATE BILL 329 By
McNally

HOUSE BILL 1441
By Dunn

AN ACT to amend Tennessee Code Annotated, Title 56, Chapter 32, relative to actions against managed care organizations.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 32, is amended by adding the following as a new section:

Section ___. (a) In any civil action brought to enforce the terms and conditions of a health maintenance organization contract authorized by Tennessee Code Annotated, Title 56, Chapter 32, or a prepaid health plan in which the subscriber or enrollee prevails, the court shall enter a judgment or decree against the health maintenance organization or prepaid health plan and in favor of the subscriber or enrollee for reasonable attorney's fees and court costs. The award of such attorney's fees and court costs shall be included in the judgment or decree. This section does not authorize a civil action against the state, agencies, or its employees.

(b) The provisions of this section are cumulative to rights under the general civil and common law, and no action of the department of commerce and insurance shall abrogate such rights to damage or other relief in any court.

(c) Any person may bring a civil action against a health maintenance organization or a prepaid health plan when such person suffers damages as a result of:

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(1) A violation of Tennessee Code Annotated, Title 56, Chapter 8, or Section 56-32-113, by the health maintenance organization or prepaid health plan; or

(2) A failure by the health maintenance organization or prepaid health plan to attempt in good faith to settle claims when, under all the circumstances, it could have done so had it acted fairly toward its subscribers and enrollees.

However, a person pursuing a remedy under this section need not prove that such act was committed or performed with such frequency as to indicate a general business practice.

(d)

(1) As a condition precedent to bringing an action under this section, the department of commerce and insurance and the health maintenance organization or prepaid health plan must have been given sixty (60) days' written notice of the violation. If the department returns a notice for lack of specificity, the sixty (60) day time period shall not begin until a proper notice is filed.

(2) The notice shall be on a form provided by the department and shall state with specificity the following information, and such other information as the department may require:

(A) The provision of law, including the specific language of the law, which the health maintenance organization or prepaid health plan has allegedly violated;

(B) The facts and circumstances giving rise to the violation;

(C) The name of any individual involved in the violation;

(D) Any reference to specific contract language that is relevant to the violation; and

(E) A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized by this section.

(3) Within twenty (20) days after receipt of the notice, the department may return any notice that does not provide the specific information required by this section and the department shall indicate the specific deficiencies contained in the notice.

(4) No action shall lie under this section if, within sixty (60) days after filing notice, the damages are paid or the circumstances giving rise to the violation are corrected.

(5) The health maintenance organization or prepaid health plan that is the recipient of a notice filed pursuant to this section shall report to the department on the disposition of the alleged violation.

(6) The applicable statute of limitations for an action under this section shall be tolled for a period of sixty-five (65) days by the mailing of the notice required by this subsection or the mailing of a subsequent notice required by this subsection.

(e) Upon adverse adjudication at trial or upon appeal, the health maintenance organization or prepaid health plan shall be liable for damages, together with court costs and reasonable attorney's fees, incurred by the plaintiff.

(f) Punitive damages shall not be awarded under this section unless the acts giving rise to the violation occur with such frequency as to indicate a general business practice and are willful, wanton, and malicious or are in reckless disregard for the rights of any subscriber or enrollee. Any person who pursues a claim under this subsection shall post, in advance, the costs of discovery. Such costs shall be awarded to the health maintenance organization or prepaid health plan if no punitive damages are awarded to the plaintiff.

(g) This section does not authorize a civil action against the department of commerce and insurance, its employees, or the commissioner.

(h) The civil remedy specified in this section does not preempt any other remedy or cause of action provided for pursuant to any other law or pursuant to the common law of this state. Any person may obtain a judgment under either the common law remedy of bad faith or the remedy provided in this section, but is not entitled to a judgment under both remedies. This section does not create a common law cause of action. The damages recoverable under this section include damages which are a reasonably foreseeable result of a specified violation of this section by the health maintenance organization or prepaid health plan and may include an award or judgment in an amount that exceeds contract limits.

SECTION 2. The reports and the records prepared or obtained under this section or by the department or by an outside source may be used solely for the purpose of the department in enforcing the requirements of this act and in disciplinary proceedings. Except as otherwise provided in this section, any identifying information contained in these records and reports is confidential. For purposes of this section, the term "identifying information" means information that identifies an individual and does not include information that identifies an organization.

SECTION 3. This act shall take effect July 1, 1997, the public welfare requiring it.